

## **REMARKS**

The Final Office Action dated October 23, 2006 has been reviewed, and the comments of the U.S. Patent Office have been considered. Claims 1, 4, and 21 have been amended and claim 22 has been added.

### Drawing Objections

New formal drawings are provided with the present amendment.

### 35 USC §112 par. 1 Rejections

Claims 21 was rejected under 35 U.S.C. § 112, first paragraph, for failing to comply with the written description requirement. The language identified as lacking support has been replaced in the amended claim.

### 35 USC §112 par. 2 Rejections

Claims 1-2, 4, 6-7, 9 and 12 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claims are amended to correct the informalities noted in the Office Action. Specifically, claim 1 is amended to replaced “filter” with “filter media.” Claim 4 was amended to make a definite reference to antecedent inlet or outlet caps. Claim 21 was amended to make unambiguous references to the headspaces.

### 35 USC §102 Rejections

Claims 1-2, 4, 6-7 and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 4,784,768 (hereinafter referred to a Mathieu).

Applicants traverse the rejection of claim 1. Claim 1 recites “both the outlet port for blood and the infusion port being connected to the housing such that they open directly to said headspace.” Mathieu clearly shows an outlet port (2a) and an additional port (12), but the additional port (12) opens to the outlet port (2a). In contrast, claim 1 specifies that both the

outlet port and infusion port open directly to the headspace. In fact, Mathieu shows only a single port opening directly to the headspace 2a, namely port 3a. Thefreedictionary.com defines “direct” as “[h]aving no intervening persons, conditions, or agencies; immediate: direct contact; direct sunlight.” Port 12 requires the agency of port 2a in order to communicate with the headspace 2a. Thus it does not open directly.

### 35 USC §103 Rejections

Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mathieu. Claim 21 has been amended to recite “a dilution inlet directly connected to, and terminating at, the blood outlet headspace. Mathieu clearly shows an outlet port (2a) and an additional port (12), but the additional port (12) terminates at outlet port (2a) not at the headspace 2a. Similarly claim 22 recites “the outlet port for blood and the infusion port being connected to the housing such that they both terminate at said headspace.”

The Office Action cites *In re Japikse* for the general proposition that rearrangement of parts involve only routine skill and that the direct connection of the outlet and dilution inlet to the headspace would therefore be obvious. The Federal Circuit has repeatedly held that the use of *per se* rules of obviousness is improper. In addition, in *In re Japikse*, the court found that the claimed different of “shifting the position of the starting switch would not have modified the operation of the device.” As the present specification makes clear, the location of the dilution port promotes turbulent mixing of blood which provides a clear benefit well-articulated in the specification. Therefore, Applicants propose that the rule of *In re Japikse* is not applicable to the present claims for obviousness. Also, MPEP section 2144.04(C) cites *Ex parte Chicago Rawhide Mfg. Co.*, 223 USPQ 351, 353 (Bd. Pat. App. & Inter. 1984) in which the Board stated that “[t]he mere fact that a worker in the art could rearrange the parts of the reference device to meet the terms of the claims on appeal is not by itself sufficient to support a finding of obviousness. The prior art must provide a motivation or reason for the worker in the art, without the benefit of appellant's specification, to make the necessary changes in the reference device.”

**CONCLUSION**

In view of the foregoing amendments and remarks, Applicant respectfully requests reconsideration of this Application and the prompt allowance of the pending claims.

Should the Examiner feel that there are any issues outstanding after consideration of this response, the Examiner is invited to contact the undersigned to expedite prosecution of the application.

The Commissioner is hereby authorized by this paper to charge any fees during the entire pendency of this application including fees due under 37 C.F.R. §§ 1.16 and 1.17 which may be required, including any required extension of time fees, or credit any overpayment to Deposit Account 50-3840. **This paragraph is intended to be a CONSTRUCTIVE PETITION FOR EXTENSION OF TIME in accordance with 37 C.F.R. § 1.136(a)(3).**

Respectfully submitted,



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